

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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OFFICE OF THE SECRETARY

In the Matters of)

Deployment of Wireline Services Offering)
Advanced Telecommunications Capability)

CC Docket No. 98-147

Petition of Bell Atlantic Corporation)

CC Docket No. 98-11

For Relief from Barriers to Deployment of)
Advanced Telecommunications Services)

Petition of WS WEST Communications, Inc.)
For Relief from Barriers to Deployment of)
Advanced Telecommunications Services)

CC Docket No. 98-26

Petition of Ameritech Corporation to)
Remove Barriers to Investment in)
Advanced Telecommunications Technology)

CC Docket No. 98-32

Petition of the Association for Local)
Telecommunications Services (ALTS) for a)
Declaratory Ruling Establishing Conditions)
Necessary to Promote Deployment of)
Advanced Telecommunications Capability)
Under Section 706 of the Telecommunications)
Act of 1996)

CC Docket No. 98-78

Southwestern Bell Telephone Company)
Pacific Bell, and Nevada Bell Petition for)
Relief from Regulation Pursuant to Section)
706 of the Telecommunications Act of 1996)
and 47 U.S.C. § 160 for ADSL Infrastructure)
and Service)

CC Docket No. 98-91

**REPLY COMMENTS OF RCN TELECOM SERVICES, INC. AND
CONNECT COMMUNICATIONS CORPORATION**

RCN Telecom Services, Inc. ("RCN") and Connect Communications Corporation

("Connect"), by undersigned counsel, submit these reply comments in connection with the

remand of the Commission's August 1998 *Advanced Services Order* from the United States Court of Appeals for the District of Columbia Circuit.^{1/}

ADVANCED SERVICES CONSTITUTE "TELEPHONE EXCHANGE SERVICE"

RCN and Connect agree with those commenters that contend that advanced services constitute "telephone exchange service" under Section 3(47).^{2/} As explained by RCN and Connect in initial comments, DSL and other advanced services are "telephone exchange service" under the part B definition because they are "comparable" to "telephone exchange service" as defined in part A. Comments of ILECs contending that advanced services are not "comparable" to services meeting the part A definition of 3(47) are based essentially on the view that "comparable" is limited to voice services. ILECs provide little or no support for this view other than unsupported interpretations of the Act.

RCN and Connect agree with those commenters pointing out that Congress intended the part B definition of "telephone exchange service" to accommodate introduction of new technologies into local networks.^{3/} Several commenters correctly point out that the "comparable" test under Part B of the definition encompasses more than traditional voice

^{1/} *Comments Requested in Connection with Court Remand of August 1998 Advanced Services Order*, Public Notice, CC Docket Nos. 98-11, 98-26, 98-32, 98-78, 98-91, 98-147, DA 99-1853 (rel. September 9, 1999); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, CC Docket No. 98-147, FCC 98-188 (rel. August 7, 1998) ("*Advanced Services Order*").

^{2/} *See, e.g.*, Mindspring at 5; Prism at 12; GSA at 5.; AT&T at 8; Wisconsin PSC at 3.

^{3/} CDS Networks at 3; Prism at 10.

services.^{4/} The part B definition was adopted in the 1996 Act in order to assure that “telephone exchange service” and state authority over it was sufficiently broad to accommodate introduction of new technologies. There is no support in the Act or its legislative history for SBC’s assertion that Part B of the definition of “telephone exchange service” was included in the 1996 Act to permit a definition of “telephone exchange service” to apply to new competitive entrants.^{5/} The original pre-1996 Act definition would have been fully adequate to define “telephone exchange service” provided by CLECs. Congress did not need to add the Part B definition in order to accommodate CLECs.

SBC and other commenters contend that DSL service cannot constitute “telephone exchange service” under the Part A definition because DSL services do not begin and end “within a telephone exchange.”^{6/} However, DSL service originates and terminates locally even if any communications passing over it are terminated outside the local calling area. Thus, the DSL service begins at the customer’s premises and ends when it connects to the carriers ATM or frame relay network. Accordingly, DSL service both originates and terminates “within a telephone exchange.”

SBC also contends that DSL is not an “intercommunicating” service and, therefore, cannot constitute “telephone exchange service.”^{7/} This is incorrect in that DSL is frequently used to connect users to corporate Intranets which are frequently in the local calling area and also

^{4/} Prism at 12; AT&T at 13; Rhythms NetConnections at 11.

^{5/} SBC at 6.

^{6/} SBC at 4.

^{7/} SBC at 4.

permits users to send email to other users in the local area. Thus, DSL provides an intercommunicating service within the local calling area.

ILECs further contend that DSL cannot constitute “telephone exchange service” because that service is not covered by the exchange service charge.^{8/} According to SBC and US West, the exchange service charge is a carrier’s basic local calling charge.^{9/} As noted above, DSL can be used for local intercommunicating. The DSL charge in those cases constitutes the “exchange service charge.” Therefore, DSL is covered by the exchange service charge for this service, although the exchange service charge for DSL is different from the exchange service charge for voice calling.

ADVANCED SERVICES ARE NOT “INFORMATION ACCESS”

The Commission should reject the view that advanced services that provide access to the Internet cannot constitute either “exchange access” or “telephone exchange service” and, therefore, must constitute “information access.”^{10/} As noted by commenters, “information access” is not a category that is defined in the Act or given any role in the key-market opening provisions of the Act.^{11/} While Section 251(g) refers to “information access,” this reference was only for the purpose of continuing equal access obligations of the *Modification of Final Judgement* in effect until superseded by FCC regulations. There is no statutory foundation for “information access” as a separate category of ILEC services. It is simply too large a

^{8/} SBC at 5.

^{9/} *Id.*

^{10/} US West at 7-8; SBC at 2-7.

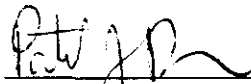
^{11/} Rhythms NetConnections at 7.

consequence to assume that under the Act the Commission may establish a new category of ILEC services exempt from Section 251(c) obligations absent an express provision to that effect, especially absent any showing that this would be consistent with the pro-competitive goals of the Act. Accordingly, even if it is correct as some commenters contend that DSL fits squarely within the definition of "information access" under the *Modification of Final Judgment*,^{12/} that does not have any bearing on whether ILEC provision of advanced services are exempt from Section 251(c) obligations under the Act.

In any event, as discussed above, advanced services, including DSL service used by end users to access ISPs, constitute "telephone exchange service." Therefore, there is no basis for the conclusion that advanced services constitute "information access" because they do not fit into the statutory definitions of either "exchange access" or "telephone exchange service."

CONCLUSION

For these reasons, the Commission should determine that advanced services constitute "telephone exchange service" under the Act and not determine that advanced services constitute "information access."



Patrick J. Donovan
Antony R. Petrilla
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500

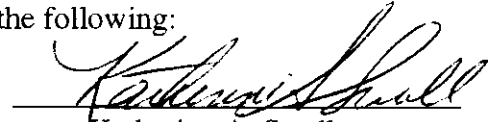
Dated: October 1, 1999

Counsel for RCN Telecom Services,
Inc. and Connect Communications
Corporation.

^{12/} Covad Comments at 7.

CERTIFICATE OF SERVICE

I, Katherine A. Swall, hereby certify that on this 1st day of October, 1999 the foregoing Reply Comments of RCN Telecom Services, Inc. and Connect Communications Corporation were delivered by hand and first class mail to the following:


Katherine A. Swall

Magalie Roman Salas (orig +7)
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Glenn B. Manishin
Christy C. Kunin
Lisa N. Anderson
Stephanie A. Joyce
Blumenfeld & Cohen
Technology Law Group
1625 Massachusetts Avenue, N.W. - Suite
300
Washington, D.C. 20036

Jeffrey Blumenfeld
General Counsel
Rythms NetConnections Inc.
6933 So. Revere Parkway
Englewood, Colorado 80112

Mark C. Rosenblum
Stephen C. Garavito
James J.R. Talbot
295 North Maple Avenue
Basking Ridge, New Jersey 07920

David W. Carpenter
Peter D. Keisler
David L. Lawson
James P. Young
1722 Eye Street, N.W.
Washington, D.C. 20006

Janice Myles
Common Carrier Bureau
Policy and Program Planning Division
Federal Communications Commission
445 12th Street, S.W. - Room 5-C327
Washington, D.C. 20554

Alfred G. Richter, Jr.
Roger K. Toppins
Michael J. Zpevak
Tracy A. Parks
One Bell Plaza - Room 3021
Dallas, Texas 75202

International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20036

Thomas M. Koutsky
Jason Oxman
Covad Communications Company
3560 Bassett Street

Jonathan Jacob Nadler
Brian J. McHugh
Squire, Sanders & Dempsey, L.L.P.
1201 Pennsylvania Avenue, N.W.

Steven Gorosh
Michael Olsen
NorthPoint Communications, Inc.
303 2nd Street
San Francisco, California 94107

George N. Barclay
Associate General Counsel
Personal Property Division
Michael J. Ettner
Senior Assistant General Counsel
Personal Property Division
General Services Administration
1800 F Street N.W. - Room 4002
Washington, D.C. 20405

Earl W. Comstock
John W. Butler
Sher & Blackwell
1850 M Street, N.W. - Suite 900
Washington, D.C. 20036

Mitchell Lazarus
Counsel for CDS Networks, Inc.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street - 11th Floor
Arlington, Virginia 22209-3801

Jeffrey Blumenfeld
General Counsel
Rhythms NetConnections Inc.
6933 So. Revere Parkway
Englewood, Colorado 80112

Christopher A. Holt
Assistant General Counsel
Regulatory and Corporate Affairs
CoreComm Limited
110 East 59th Street - 26th Floor
New York, New York 10022

David N. Porter

Ruth M. Milkman
Charles W. Logan
Lawler, Metzger & Milkman, LLC
1909 K Street, NW - Suite 820
Washington, D.C. 20006

Snavelly King Majors O'Connor & Lee, Inc.
1220 L Street, N.W. - Suite 410
Washington, D.C. 20005

Dave Baker
Vice President
Legal and Regulatory Affairs
MindSpring Enterprises, Inc.
1430 West Peachtree Street - Suite 400
Atlanta, Georgia 30309

Brad E. Mutschelknaus
Jonathan Canis
Edward A. Yorkgitis, Jr.
Kelley, Drye & Warren, LLP
1200 Nineteenth Street, N.W. - Fifth Floor
Washington, D.C. 20036

Glenn B. Manishin
Christy C. Kunin
Lisa N. Anderson
Stephanie A. Joyce
Blumenfeld & Cohen
Technology Law Group
1625 Massachusetts Ave. N.W. - Suite 300
Washington, D.C. 20036

James L. Casserly
Casey B. Anderson
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W. - Suite 900
Washington, D.C. 20004

Richard S. Whitt

Kent F. Heyman, General Counsel
Scott A. Sarem, Assistant Vice President
Richard E. Heatter, Assistant Vice President
MGC Communications, Inc.
3301 N. Buffalo Drive
Las Vegas, Nevada 89129

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Johnke
1850 M Street N.W. - 11th Floor
Washington, D.C. 20036

Randall B. Lowe, Chief Legal Officer
Julie A. Kaminski, Deputy Chief Counsel
Piper & Marbury,, L.L.P.
1200 19th Street, N.W. - Suite 700
Washington, DC 20036-2430

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W. - Suite 701
Washington, D.C. 20006

Lynda Dorff, Secretary
Wisconsin Public Service Commission
610 N. Whitney Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

Alfred G. Richter, Jr.
Roger K. Toppins
Michael J. Zpevak
Tracy A. Parks
SBC Communications Inc.
One Bell Plaza, Room 3021
Dallas, Texas 75202

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
Irving, Texas 75038